

IN THE UNITED STATES  
DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

SUSAN S. DEPAOLA, CHAPTER  
7 TRUSTEE FOR THE  
BANKRUPTCY ESTATE OF  
PHILIP L. GOODWYN AND  
SIMPLE PLEASURES, INC.,

PLAINTIFFS,

V

V. RESTAURANTS, INC., AND  
VINCE SAELE,

DEFENDANTS.

CASE NO.: 2:06-CV-00893-WKW

(BANKRUPTCY CASE NO. 05-  
32325-CHAPTER 7)

(BANKRUPTCY ADV. PRO. NO.  
05-03062-WRS)

**DEFENDANT’S MOTION IN LIMINE**

**COME NOW** the defendants, V. Restaurants, Inc., and Vince Saele and moves *in limine* to for an Order prohibiting the introduction of and prohibiting any party from mentioning to the jury into evidence the following:

1. **Plaintiffs exhibit # 26.** Although no document is included behind tab #26 the index states “Notice of Internal Revenue Service Certificate of Discharge and Release of Lien” The Defendant is of the opinion that the Plaintiff speaks of the following item. A document entitled “Internal Revenue Service – Department of Treasury” and dated November 19, 2004 that purports to be correspondence from the Internal Revenue Service regarding a “Certificate of Discharge.” This document is not relevant to the issues at hand and is precluded by *Rule 402, Fed.R.Evid.* Furthermore, the document, even if marginally relevant, will serve to confuse the issues and mislead the jury and is bared by *Rule 403, Fed.R.Evid.*

2. **Plaintiffs exhibit #'s 16, 22, 23, and 24.** Any and all correspondence from Plaintiff’s counsel to any party or counsel involved in this litigation. Said correspondence is

hearsay and precluded from introduction by *Rule 801* and *802, Fed.R.Evid.* Said documents are not within an exception provided for by rule *803, Fed.R.Evid.* The aforementioned documents are not relevant to the issues at hand and are precluded by *Rule 402, Fed.R.Evid.*

3. **The testimony of any Internal Revenue Service employee without the proper ‘Testimonial Authorization.’** - The Defendants note that the Plaintiffs have listed an employee of the Internal Revenue Service as a possible witness.

a. One of the issues in this case is whether or not the Plaintiffs complied with the September 24, 2004, Letter of Understanding that embodied the parties’ agreement. In part, this agreement required the Plaintiffs to obtain the release of any and all liens they (Internal Revenue Service) may have against Phillip, individually or the business ...”

b. The Internal Revenue Manual states in part as it relates to testimony by an IRS employee:

**“Requests or Demands by any Party (including other Government agencies) in a Case Not Involving Tax Administration.** Authorization is required when testimony or production of documents is sought in any case not involving tax administration. IRM 11.3.35.7(3). The prohibitions of Section 6103 generally bar the disclosure of tax records in non-tax litigation to which the Service or the United States is not a party.” IRM 34.9.1.3(4)

c. The above prohibition can be remedied by obtaining “Testimonial Authorizations” from the Service which serves to define the scope of the employee’s testimony and will place limits on any testimony sought during cross-examination. *IRM 11.3.35.1*

d. The Defendants have a right to a full and sifting cross-examination unlimited by any Testimonial Authorizations pursuant to *IRM 11.3.35.1*.

e. The question of whether or not the subject liens were released is a purely legal matter and the Defendants have a right to have decisions regarding purely legal matters left to the Court. In addition, the testimony by any Service employee regarding documents provided to the Plaintiffs is akin to expert testimony and covered by *Rule 703, Fed.R. Evid.* of which the Plaintiffs have not given proper notice.

**WHEREFORE, THE PREMISES CONSIDERED,** Counsel for the Defendants pray that this Honorable Court will issue an order in limine preventing the suggestion, mention and questions which elicit information related to same before the jury to be impaneled in this case.

**RESPECTFULLY SUBMITTED** this the 12th day of March, 2007.

/s/ Daniel G. Hamm

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RESTAURANTS, INC AND VINCE  
SAELE  
560 S. McDONOUGH ST., STE. A  
MONTGOMERY, ALABAMA 36104  
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FAX 334-323-5666

## CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of this Defendant's Motion In Limine by electronic transmission or by placing a copy in the United States Mail with sufficient postage for first class delivery to the attorneys named below.

**DONE** this the 12th day of March, 2007.

/s/ Daniel G. Hamm

---

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MAILING ADDRESS  
P.O. Box 4054  
MONTGOMERY, ALABAMA  
36103-4054

October 11, 2004

Mr. Robert Smith, Jr.  
Regions Bank  
Special Assets Department  
P.O. Box 511  
Montgomery, AL 36101-0511

Reference: Simple Pleasures, Inc., d/b/a Gator's

Dear Robert:

It is my understanding that Regions Bank has agreed to accept \$30,000.00 from the proceeds of the pending sale of Simple Pleasures, Inc. in full settlement of the above debt. If my understanding is correct, please confirm this agreement in writing. The only other matter to be resolved is an agreement with the Internal Revenue Service.

Sincerely,

Memory & Day

By:

*Von G. Memory, all*  
Dictated by Von G. Memory  
Signed in his absence

VGM/pkh

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**ATTORNEYS AT LAW**

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P.O. BOX 4054  
MONTGOMERY, ALABAMA  
36103-4054

August 10, 2004

**VIA FACSIMILE 290-4095**

Ms. L. C. Wilson  
United States Department of Treasury  
Internal Revenue Service  
1285 Carmichael Way  
Montgomery, LA 36106

Reference: Simple Pleasures, Inc. (63-1095373)/  
Philip Goodwyn (417-72-3661)

Dear Ms. Wilson:

This letter follows our telephone conversation earlier today regarding the above taxpayers.

As has been explained by Mr. Goodwyn in correspondence, also in our telephone conversation, Simple Pleasures, Inc. has received a proposal or offer to purchase the business known as Gator's, located at 5040 Vaughn Road, Montgomery, Alabama. It is my information that the purchase offer is approximately \$120,000.00 for the business and all of the restaurant amenities. Unfortunately, this offer falls far short of paying the debts and obligations owed by Simple Pleasures, Inc. Regardless, Mr. Goodwyn is not able to continue, for personal reasons, in this venture.

I do not have current information regarding the bifurcated indebtedness on the Internal Revenue Service; however, my clients are willing to offer \$40,000.00 from the proposed offer to satisfy the personal and corporate obligations. I am advised by Mr. Goodwyn that you applied the check from my office (approximately \$25,000.00) to the corporate obligation. I hope that this information is incorrect in that I specifically instructed that the check proceeds were to be paid towards the trust fund portion. Consequently, this is a matter

Von G. Memory

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8/10/2004

that will have to be sorted out at a later point. Regardless, at least for the present, allow me to go on.

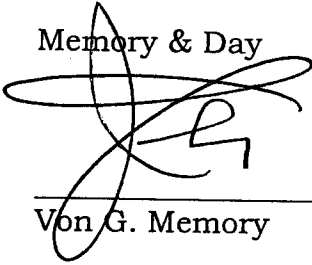
I want to bring to your attention another matter which should be weighed in the determination of the IRS. Simple Pleasures, Inc., August 28, 2002, borrowed a substantial sum from Regions Bank and pledged the restaurant amenities as collateral. The current balance is \$84,000.00. Also, the landlord is owed another \$85,000.00 and will most assuredly claim or insist upon the lien. Finally, another \$30,000.00 to \$50,000.00 is owed, unsecured, to vendors and other materialmen.

Based upon the foregoing, I encourage the Internal Revenue Service to accept **\$40,000.00** in full satisfaction of the current balance owed by Simple Pleasures, Inc. and Philip Goodwyn. Unfortunately, if the current sale does not work and the restaurant closes, there will be no ability by the corporation to pay its portion and you are obviously aware that Mr. Goodwyn has limited personal ability on the trust fund portion. Consequently, a \$40,000.00 recovery would be significant on the part of the IRS.

Sincerely,

Memory & Day

By:

  
\_\_\_\_\_  
Von G. Memory

VGM/pkh

P.1

## TRANSMISSION REPORT

(TUE) AUG 10 2004 10:26

USER NAME :  
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 TIME SENT : 10:25, 8/10  
 DURATION : 46sec  
 MODE : ECM

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August 10, 2004

**VIA FACSIMILE 290-4095**

Ms. L. C. Wilson  
 United States Department of Treasury  
 Internal Revenue Service  
 1285 Carmichael Way  
 Montgomery, LA 36106



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September 10, 2004

Ms. L. C. Wilson  
United States Department of Treasury  
Internal Revenue Service  
1285 Carmichael Way  
Montgomery, LA 36106

Reference: Simple Pleasures, Inc. (63-1095373)  
Philip Goodwyn (417-72-3661)

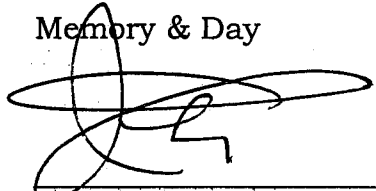
Dear Ms. Wilson:

I am writing on behalf of Philip Goodwyn and Simple Pleasures, Inc. It is anticipated that Mr. Goodwyn's restaurant will be the subject of a sale. However, I would like to wait until I have a copy of a signed contract for the sale before I finalize Mr. Goodwyn's application for discharge of lien. Also, with the application, I intend to provide you the amount that will be offered to accomplish a release.

Sincerely,

Memory & Day

By:

  
Von G. Memory

VGM/pkh

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September 28, 2004

**VIA FACSIMILE 290-4095**

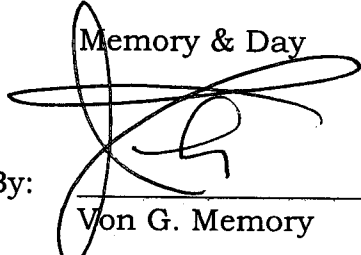
Ms. L. C. Wilson  
Internal Revenue Service  
1285 Carmichael Way  
Montgomery, LA 36106

Reference: Simple Pleasures, Inc. (63-1095373)  
Philip Goodwyn (417-72-3661)

Dear Ms. Wilson:

Pursuant to the Simple Pleasures sale, I am enclosing herewith a contract. You will notice that the consideration is \$90,000.00. This amount is not nearly sufficient to take care of all the liens. You will remember that Regions Bank has a lien for approximately \$100,000.00 and the landlord has a similar lien. I do not know where the lien of the Internal Revenue Service falls. However, I would like to encourage the Internal Revenue Service to accept \$40,000.00 in full satisfaction of the current obligations owed by Simple Pleasures and Philip Goodwyn.

Sincerely,

Memory & Day  
  
By: \_\_\_\_\_  
Von G. Memory

VGM/pkh  
Enclosure

P.1

## TRANSMISSION REPORT

(TUE) SEP 28 2004 12:42

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 TIME SENT : 12:39, 9/28  
 DURATION : 3min, 16sec  
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September 28, 2004

**VIA FACSIMILE 290-4095**

Ms. L. C. Wilson  
 Internal Revenue Service  
 1285 Carmichael Way  
 Montgomery, LA 36106

Reference: Simple Pleasures, Inc. (63-1095373)